STATE OF MICHIGAN

COURT OF APPEALS

MARTIN A. MEIER,

Plaintiff-Appellant,

v

ZION EVANGELICAL LUTHERAN CHURCH OF MONROE MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
October 23, 2014

No. 317137
Monroe Circuit Court
LC No. 12-033226-NO

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant under MCR 2.116(C)(10). We affirm.

I

Plaintiff, a member of defendant church, also served as a volunteer on defendant's board of trustees, a group of individuals who volunteer to perform various repairs and maintenance on defendant's premises, which house a school and church located in the same building. Plaintiff never received or expected any payment or compensation for the work he performed for defendant, working strictly as a volunteer.

Plaintiff volunteered to take down confirmation banners hanging about 20 to 25 feet high in the gymnasium of defendant's school. To perform this task, plaintiff decided to use defendant's extension ladder. Plaintiff and defendant's pastor carried the extension ladder from the garage to the gymnasium. Then, plaintiff, alone, set the extension ladder place and positioned on the linoleum or vinyl gymnasium floor. While working on the extension ladder, without defendant's assistance or instruction, the ladder slipped, causing plaintiff to fall approximately 20 feet to the ground resulting in serious injuries. After the accident, it was discovered that the ladder did not have any antiskid rubber pads on its feet to prevent it from slipping, which plaintiff alleged caused the ladder to fall. Plaintiff admitted that had he looked at the bottom of the ladder before using it, he would have observed that the feet lacked rubber pads and changed his use of the ladder.

Plaintiff filed a negligence action against defendant, alleging that defendant breached the duty of care owed to plaintiff by failing to provide a safe and nondefective ladder for his use, to

properly maintain the ladder, and to warn plaintiff that the ladder lacked antiskid rubber pads. Defendant moved for summary disposition under MCR 2.116(C)(10). Defendant argued that plaintiff's claim sounded in premises liability, that plaintiff was a licensee on defendant's premises at the time of his injury, and defendant, as a matter of law, did not breach the duty owed to a licensee because there was no evidence that defendant had any knowledge of or reason to know that the ladder lacked antiskid rubber pads and the condition of the ladder was visible upon casual inspection. Defendant also argued that, even if the trial court determined that plaintiff was an invitee, his claim would be barred under the open and obvious danger doctrine. The trial court granted defendant's motion for summary disposition on all bases. Plaintiff appeals that decision.

II

We review de novo a trial court's ruling regarding a summary disposition motion. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). A motion brought under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden*, 461 Mich at 120; *Walsh*, 263 Mich App at 621. "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh*, 263 Mich App at 621. A genuine issue of material fact exists when, viewing the evidence in a light most favorable to the nonmoving party, it raises an issue upon which reasonable minds could differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013). Further, questions of law are subject to de novo review. *Laier v Kitchen*, 266 Mich App 482, 486; 702 NW2d 199 (2005).

Plaintiff first claims that the trial court erred by characterizing his claim of ordinary negligence as one of premises liability. We disagree. "Courts are not bound by the labels that parties attach to their claims." *Buhalis v Trinity Continuing Care Services*, 296 Mich App 685, 691; 822 NW2d 254 (2012). Instead, "'[i]t is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim."' *Id.* at 691-692, quoting *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007).

"In a negligence case, the theory of liability determines the nature of the duty owed[.]" *Laier*, 266 Mich App at 493. "Michigan law distinguishes between claims arising from ordinary negligence and claims premised on a condition of the land." *Buhalis*, 296 Mich App at 692. In a premises liability claim, "liability emanates merely from the defendant's duty as an owner, possessor, or occupier of the land." *Laier*, 266 Mich App at 493. Accordingly, "[i]f the plaintiff's injury arose from an allegedly dangerous condition on the land, the action sounds in premises liability rather than ordinary negligence; this is true even when the plaintiff alleges that the premises possessor created the condition giving rise to plaintiff's injury." *Buhalis*, 296 Mich App at 692, citing *James v Alberts*, 464 Mich 12, 18-19; 626 NW2d 158 (2001). In contrast, a claim of ordinary negligence occurs where a plaintiff is injured because of the negligent conduct of another. *James*, 464 Mich at 15; *Laier*, 266 Mich App at 493. The distinction is important because the open and obvious danger defense is available in response to a premises liability claim "whether the plaintiff has pleaded the claim as a failure to warn of a dangerous condition

or as a breach of duty in allowing the dangerous condition to exist," but does not extend to a claim of ordinary negligence. *Laier*, 266 Mich App at 489-490, 493-494, 500. A premises liability claim, however, does not "preclude a separate claim grounded on an independent theory of liability based on defendant's conduct[.]" *Id.* at 493.

We find that the trial court did not err in concluding that plaintiff's negligence claim sounds in premises liability. The liability alleged in plaintiff's complaint directly emanates from defendant's duty as the owner, possessor, or occupier of its premises. *Buhalis*, 296 Mich App at 692; *Laier*, 266 Mich App at 493. Plaintiff does not allege any negligent conduct on the part of defendant other than merely providing the use of its ladder on its premises. This Court has recognized that premises liability "extends to instrumentalities on the premises that the invitee uses at the invitation of the premises owner." *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995).

Pertinent to this case, in *Eason* this Court recognized that a premises liability claim may be founded on an allegedly defective ladder used on the premises at the invitation of the premises owner. *Id.* As in *Eason*, plaintiff alleges that his injury arose from the dangerous condition of the ladder, an instrumentality of defendant's premises, and it is evident that the liability alleged emanates from defendant's duty as the owner, possessor, and occupier of that instrumentality being used on its premises. Plaintiff argues that defendant failed to properly maintain the ladder, to provide a safe and fit ladder for his use, and to warn plaintiff of the dangers of its ladder. *Buhalis*, 296 Mich App at 692; *Laier*, 266 Mich App at 493. Plaintiff's claim, thus, was premised on the alleged condition of the ladder, an instrumentality of defendant's premises, *Eason*, 210 Mich App at 264, and the duties defendant owed because of its ownership of the ladder, which sounds in premises liability rather than ordinary negligence. *Buhalis*, 296 Mich App at 692.

In a premises liability action, the duty that a premises owner or occupier owes to a visitor is dependent on the plaintiff's status at the time of the injury as a trespasser, licensee, or invitee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000); *Sanders v Perfecting Church*, 303 Mich App 1, 4-5; 840 NW2d 401 (2013). "[A]n invitee is entitled to the highest level of protection under premises liability law." *Stitt*, 462 Mich at 596-597. "The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Id.* On the other hand, "[a] landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Id.*

Plaintiff claims that the trial court erred in finding that his status for premises liability was that of a licensee on defendant's premises. We disagree. Our Supreme Court specifically held in *Stitt* that "persons on church premises for other than commercial purposes are licensees and not invitees." *Stitt*, 462 Mich at 607. In so holding, the *Stitt* Court found:

> [T]he imposition of additional expense and effort by the landowner, requiring the landowner to inspect the premises and make them safe for visitors, must be

> directly tied to the owner's commercial business interests. It is the owner's desire to foster a commercial advantage by inviting persons to visit the premises that justifies imposition of a higher duty. In short, we conclude that the prospect of pecuniary gain is a sort of a quid pro quo for the higher duty of care owed to invitees. Thus, we hold that the owner's reason for inviting persons onto the premises is the primary consideration when determining the visitor's status: In order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose. [*Stitt*, 462 Mich at 604.]

Thus, "[p]ursuant to *Stitt*, the focus of the analysis for determining a visitor's status is 'the owner's reason for inviting persons onto the premises[.]"' *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 61; 680 NW2d 50 (2004), quoting *Stitt*, 462 Mich at 604. "[A] plaintiff will be granted invitee status only if the purpose for which she was invited onto the owner's property was 'directly tied to the owner's commercial business interests."' *Sanders*, 303 Mich App at 5, quoting *Stitt*, 462 Mich at 604. "[T]he crucial question when determining invitee status is the commercial nature of the relationship between the premises owner and the other party." *Hoffner v Lanctoe*, 492 Mich 450, 469; 821 NW2d 88 (2012).

Pertinent to this case, in *Kosmalski*, this Court concluded that a volunteer child-care provider on a church's premises was a licensee and not an invitee. *Kosmalski*, 261 Mich App at 61-63. Even though child-care services are typically recognized as services "bought and sold," in *Kosmalski*, the child-care service that the church invited the plaintiff to perform was as a volunteer, which was "indisputably noncommercial," and thus, the relationship between the volunteer and the defendant lacked "the pecuniary quid pro quo that *Stitt* requires for imposing the higher duty of care owed to invitees." *Id.* at 63. Consequently, the volunteer's status was that of a licensee upon the defendant's property at the time of her injury. *Id.* at 62-63.

On the facts of the present case, in light of the principles set forth in *Stitt* and *Kosmalski*, we find that there is no genuine issue of material fact that plaintiff was a licensee at the time of his injury. *Kosmalski*, 261 Mich App at 60, 62-63. The undisputed reason for inviting plaintiff to defendant's premises was to secure a volunteer to help take down confirmation banners in the gymnasium, and thus, like in *Kosmalski*, the invitation was for a noncommercial purpose. *Kosmalski*, 261 Mich App at 63. Although defendant clearly benefited from the maintenance work performed by plaintiff as a volunteer, and was relieved of potentially paying for the service plaintiff provided, to gain invitee status there must be a commercial purpose for the particular visitor's presence on the owner's premises at the time of his injury. *Stitt*, 462 Mich at 604, 607; *Kosmalski*, 261 Mich App at 62-63. The proper focus, as determined by *Stitt*, is on the premises owner's reason for inviting the visitor onto the premises. In this case, defendant's reason for having plaintiff on its property was undisputedly to secure a volunteer to remove the confirmation banners hanging in its gymnasium, which was not directly tied to defendant's commercial interests. We conclude, as a matter of law, that plaintiff was a licensee on defendant's premises at the time of his injury.

"[A] landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved." *Kosmalski*, 261 Mich App at 65. "The landowner owes no duty of inspection or

affirmative care to make the premises safe for the licensee's visit." *Stitt*, 462 Mich at 596. "[A] possessor of land has no obligation to take any steps to safeguard licensees from conditions that are open and obvious." *Pippin v Atallah*, 245 Mich App 136, 143; 626 NW2d 911 (2001).

The danger at issue was the lack of antiskid rubber pads on the feet of the ladder, which when placed on the linoleum or vinyl gymnasium floor, allegedly caused the ladder to slip. Even assuming this was a hidden danger, there is no evidence that defendant knew of or had reason to know that the ladder lacked antiskid rubber pads at the time of the accident. It is undisputed that defendant's pastor did not become aware that the ladder's feet lacked antiskid rubber pads until days after the accident when the MIOSHA inspector pointed it out to him. Further, it is undisputed that the principal of the school also became aware that the ladder's feet lacked antiskid rubber pads from the MIOSHA inspection report. Defendant's employed janitor testified that he had never seen or used the ladder before. There was also no evidence of any prior claims that the ladder lacked rubber pads or was defective in any way. In fact, plaintiff testified that he and others had used the ladder outdoors to clean out roof drains on previous occasions without issue. Because of plaintiff's status as a licensee, defendant had no obligation to inspect the ladder such that defendant should have been aware that it lacked antiskid rubber pads on its feet nor did it have an affirmative duty to make sure the premises and its instrumentalities were safe. *Stitt*, 462 Mich at 596. On this evidence, there is no genuine issue of material fact that defendant did not know or had reason to know of the alleged danger posed by the absence of antiskid pads on the feet of the ladder. *Stitt*, 462 Mich at 596; *Kosmalski*, 261 Mich App at 65-66. There is simply no evidence on this record to suggest that defendant was on notice, actual or otherwise, of any dangerous condition of the ladder.

Furthermore, plaintiff testified that he would have observed the lack of antiskid pads had he looked at the feet of the ladder and changed his use of the ladder accordingly. This testimony, as well as the safety warnings affixed to the ladder instructing the user to inspect for damaged or missing parts before each use and to never use a ladder with missing or damaged parts, establishes that plaintiff had reason to know of the alleged danger, which he admittedly would have discovered had he merely looked at the bottom of the ladder before using it.[1] *Stitt*, 462 Mich at 596; *Kosmalski*, 261 Mich App at 65. Also considering the obvious and foreseeable risk that an extension ladder placed on a gymnasium floor might slip and telescope down because of inadequate bracing at its base, we find there is no factual dispute that plaintiff had reason to know of the lack of antiskid rubber pads and the readily apparent risk involved in using the ladder. For these same reasons, the condition of the ladder was open and obvious. An average user with ordinary intelligence would have been able to discover the danger and the risk it presented upon casual inspection. *Hoffner*, 492 Mich at 461; *Laier*, 266 Mich App at 498. As a matter of law, defendant did not breach its duty to warn plaintiff, a licensee, that the ladder

[1] Plaintiff admitted that he did not read the written safety instructions or cautions affixed on the ladder and felt it was not necessary to do so because of his familiarity, experience, and training with extension ladders.

lacked antiskid rubber pads on its feet, and thus, summary disposition of his premises liability claim was proper.[2]

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Donald S. Owens

[2] Plaintiff's status as a licensee at the time of his injury renders unnecessary further analysis of whether there are any special aspects of the ladder's condition making it unreasonably dangerous. The special aspects exception does not apply to licensees. See *Pippin*, 245 Mich App at 143.